SUPREME COURT, U. S.

APR 11 1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1311

THEODORE McGANN, ADMINISTRATOR
c.t.a. of the
ESTATE OF JOSEPH H. McGANN, SR., DECEASED,
Petitioner

v.

DISTRICT OF COLUMBIA, a municipal corporation,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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TABLE OF CONTENTS

	Page
Petition for Writ of Certiorari	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement of Case	3
Reasons for the Allowance of Writ	
(1) The District Court and the District Court of Appeals Failed to Follow Applicable Decisions of this Court Governing the Interpretation of a Statute	4
(2) The District Court and the District Court of Appeals Deprived the Party in Interest (Father) of his Basic Constitutional Right To Notice and a Hearing, as Expressly Provided in the Statute and the Fourteenth Amendment to the United States Constitution	6
Conclusion	10

APPENDIX

Judgment of District Court	1a
Judgment of the District Court of Appeals	2a

TABLE OF AUTHORITIES CITED

28 U.S.C. sec. 1254 (1)	2
Fourteenth Amendment to the United States Constitution	2, 6
Title 21, sec. 586, of the District of Columbia Code, 1967 Edition	2, 6

CASES: Page

Northern Pacific Railroad v. Whelan, 149 U.S. 157 ... 5
Hamilton v. Rathbone, 175 U.S. 414 ... 5
Harris v. District of Columbia, 123 App. D.C., 133, 357 Fed. 2d, 593, (1965) ... 2, 10
United States v. Goldenberg, 168 U.S. 95 ... 6
Pennoyer v. Neff, 95 U.S. 714 ... 7
Simon v. Southern Railway, 236 U.S. 115 ... 7
Coe v. Armour Fertilizer Works, 237 U.S. 413 ... 8
Sanger v. Upton Assignee, 91 U.S. 56, 59 ... 8
Hawkins v. Glenn, 131 U.S. 319, 329 ... 8
Glenn v. Liggett, 135 U.S. 533, 544 ... 8
Great Western Telegraph Co. v. Purdy, 162 U.S. 329, 337 ... 8
Bernheimer v. Converse, 206 U.S. 516, 528, 532 ... 8
Converse v. Hamilton, 224 U.S. 243, 256 ... 8
Selig v. Hamilton, 234 U.S. 652, 660 ... 8
Griffin v. Griffin, 327 U.S. 220 ... 9
International Shoe Company v. Washington, 326 U.S. 310, 320-321 ... 9
McDonald v. Mabee, 243 U.S. 90 c.f. ... 10
Webster v. Reid, 11 How 437, 459 ... 10

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Theodore McGann, Administrator c.t.a. of the Estate of Joseph H. McGann, Sr., deceased prays that a Writ of Certiorari issue to review the proceedings in the United States Court of Appeals for the District of Columbia, wherein said court entered a judgment, on the 12th day of January, 1968, which judgment is appended hereto at page 1a, which affirmed the judgment of the United States District Court for

the District of Columbia, entered the 30th day of June, 1967, which judgment is appended hereto at page 1b.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit failed to follow applicable decisions of this Court governing the interpretation of a statute.

2. Whether the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit deprived the father of his basic constitutional right to notice and a hearing as expressly provided in the statute and the Fourteenth Amendment to the United States Constitution.

3. Whether the case of *Harris* v. *District of Columbia,* 123 App. D.C., 133, 357 Fed. 2d, 593, (1965), cited in the Judgment of the Court of Appeals, provided the legal basis for such judgment.

STATUTES INVOLVED

1) Title 21, Section 586, of the District of Columbia Code, 1967 Edition

2) The following portion of the Fourteenth Amendment to the United States Constitution:

> " ; or shall any state deprive any person of life, liberty or property, without due process of law, * * * "

STATEMENT OF THE CASE

On the 18th day of October, 1940, Robert R. McGann was committed to Saint Elizabeth's Hospital, Washington, D.C., Mental Health No. 21,816, in the United States District Court for the District of Columbia.

This Order of Commitment provided: "That the expense of the maintenance and treatment of Robert R. McGann shall be borne and paid by the District of Columbia until further order of this Court.

Said Order of Commitment further provided "that Joseph McGann, father of respondent, being able and having agreed to pay and contribute to the expense of the maintenance and treatment of Robert R. McGann in Saint Elizabeth's Hospital, be and hereby is authorized and directed to pay the sum of Thirty Dollars ($30.00) per month to the District of Columbia until further order of this Court."

Joseph H. McGann, Sr., paid $30.00 a month to the District of Columbia from the date of the order of commitment to the date of his death.

Demand for the payment of any amount in excess of the $30.00 a month was never made upon the father, Joseph H. McGann, Sr., during his lifetime.

The District of Columbia, on August 5, 1966, docketed a claim against the Estate of Joseph H. McGann, Sr., deceased, for the sum of $37,615.14, representing board and care of Robert R. McGann at Saint Elizabeth's Hospital in the Office of the Register of Wills, D.C. This claim was rejected by the defendant on the 23rd day of August, 1966, and thereafter the plaintiff, on the 9th day of September, 1966, filed a Complaint (for money due) in the Civil Division of

the United States District Court for the District of Columbia against Theodore McGann, as administrator c.t.a. of the Estate of Joseph H. McGann, Sr., deceased.

The cause went to a hearing before Judge Alexander Holtzoff, on the 15th day of June, 1967, and Judgment was entered against the defendant for $37,615.14.

Petitioner (defendant) on the 21st day of July, 1967, filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit and thereafter perfected said appeal. The case was argued on the 10th day of January, 1968, before Wright, Tamm and Robinson, Circuit Judges, and on the 12th day of January, 1968, judgment was entered affirming the judgment of the District Court.

REASONS FOR ALLOWANCE OF WRIT

1. The District Court and the District Court of Appeals Failed to Follow Applicable Decisions of This Court Governing the Interpretation of a Statute

The statute involved in this case is known as Title 21, Section 586, of the District of Columbia Code, 1967 Edition, and the pertinent provisions of the same are as follows:

> (a) "The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter * * * "
>
> (b) "If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to

show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least ten days before the hearing thereon. * * * "

The aforementioned statute creates a new liability unknown to the common law and is subject to a strict interpretation in conformity with the rule laid down by this Court in the case of the *Northern Pacific Railroad* v. *Whelan,* 149 U.S. 157, decided on April 24, 1893, wherein the Northern Pacific sought an injunction against the defendant, Whelan, to prevent him from selling liquor to the employees of said railroad. The Court denied the injunction and in so doing said:

> "But this section, creating a new liability unknown to the common law, is to be strictly construed, and is not to be extended beyond the clear import of its terms; and, as the only remedy which it gives is an action against the seller of the liquor, or against the owner, of the place where it is sold, to recover damages suffered by reason of sales to particular persons, it cannot be construed as authorizing an injunction to prevent the use of the building for future sales."

The case of *Hamilton* v. *Rathbone,* 175 U.S. 414, decided December 18, 1899, had to do with the interpretation of Section 728 of the "Revised Statutes of the District of Columbia" and was by a Writ of Error issued by the Supreme Court of the United States to the then Supreme Court of the District of Columbia and had to do with the right of a married woman to dispose of all of her property, and Mr. Justice Brown in the opinion of the Court said,

> "But where the act is clear upon its face, and when standing alone it is fairly susceptible of but

one construction that construction must be given to it."

Mr. Justice Brown in this case cited the case of *United States.* v. *Goldenberg,* 168 U.S. 95 (decided October 25, 1897) in which Mr. Justice Brewer said:

> "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The Courts have no function of legislation and simply seek to ascertain the will of the legislator."

2. The District Court and the District Court of Appeals Deprived the Party in Interest (Father) of His Basic Constitutional Right to Notice and a Hearing, as Expressly Provided in the Statute and the Fourteenth Amendment to the United States Constitution

In many instances it is the terms of a statute which is found lacking in due process, but in the instant case the legislature with unmistakable clarity expressly provided that the party (father) be given notice and a hearing, as evidenced by the following passage from said statute:

> " * * * THE COURT SHALL ISSUE TO HIM A CITATION TO SHOW CAUSE WHY HE SHOULD NOT BE ADJUDGED TO PAY A PORTION OR ALL OF THE EXPENSES OF MAINTENANCE OF THE PATIENT. THE CITATION SHALL BE SERVED AT LEAST TEN DAYS BEFORE THE HEARING THEREON. * * * "

The pertinent part of the Fourteenth Amendment to the United States Constitution is as follows:

> " ; OR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OF PROPERTY, WITHOUT DUE PROCESS OF LAW, * * * "

This court has rigidly adhered to the principles enunciated in the Fourteenth Amendment. A case often quoted as authority on this subject is *Pennoyer* v. *Neff*, 95 U.S. 714, decided in 1878, wherein the plaintiff sought to collect an attorney fee from a non-resident thru service by publication and upon the entry of judgment for the plaintiff and an appeal to this Court resulted in a reversal of said judgment, and this Court in its opinion said:

> "Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the state resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom the court has no jurisdiction do not constitute due process of law * * *. They then mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution—that is by the law of its creation—to pass upon the subject-matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance".

In 1915 this Court in the case of *Simon* v. *Southern Railway*, 236 U.S. 115, in reversing a judgment obtained against the defendant by service upon the Secretary of State of Louisiana, said:

> "The defendant should have been served personally * * * When a petition cannot legally be served on a defendant, the Court can exercise no jurisdic-

tion over him. The service defines the court's jurisdiction."

The case of *Coe* v. *Armour Fertilizer Works,* 237 U.S. 413, also decided in 1915, had to do with a judgment against the Parrish Vegetable and Fruit Company by Armour Fertilizer Works. Coe, as a shareholder of the Parrish Co. was made liable for the amount of the judgment by statute and the property of Coe was levied upon, and the Court, in holding this proceeding invalid, said:

> "It may be conceded that a judgment recovered against a corporation, without fraud or collusion, in a court having jurisdiction over the subject-matter and the party, may consistently with the Fourteenth Amendment be treated as concluding the stockholder respecting the existence and amount of the indebtedness so adjudged, Sanger vs. Upton Assignee, 91 U.S. 56, 59; Hawkins vs. Glenn, 131 U.S. 319, 329; Glenn vs. Liggett, 135 U.S. 533, 544; Great Western Telegraph Co. vs. Purdy, 162 U.S. 329, 337.
>
> "But before a third party's property may be taken to pay that indebtedness upon the ground that he is a stockholder, and indebted to the corporation for an unpaid subscription, he is entitled, upon the most fundamental principles, to a day in court and a hearing upon such questions as whether the judgment is void or voidable for want of jurisdiction or fraud, whether he is a stockholder and indebted, and other defenses personal to himself. See Great Western Telegraph Company vs. Purdy, ubi supra; Bernheimer vs. Converse, 206 U.S. 516, 528, 532; Converse vs. Hamilton, 224 U.S. 243, 256; Selig vs. Hamilton, 234 U.S. 652, 660."

Your petitioner, at this point, respectfully calls to the attention of the Court the similarity of the facts in the aforementioned *Coe* v. *Armour* case and the instant case in that in both cases the party sought to be held was a third party and not primarily responsible for the payment of the indebtedness.

A Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit was granted in the case of *Griffin* v. *Griffin,* 327 U.S. 220, decided in 1946. The facts in that case had to do with an action brought by the wife in the District Court for the District of Columbia against the husband to recover on a New York judgment obtained against said husband for arrears of alimony payments. The husband was served in the original suit for alimony and an order entered in 1926 in the New York court requiring him to pay $3,000.00 annually as alimony. In 1938 the New York court entered an ex parte money judgment without notice to the husband. The District Court entered judgment for the wife based on the New York judgment and upon appeal to the District Court of Appeals said judgment was affirmed and thereafter the husband petitioned this court for a Writ of Certiorari.

This Court in reversing the judgment said:

> "Concededly the 1938 judgment was entered without actual notice to or appearance by petitioner, and without any form of service of process calculated to give him notice of the proceedings. Compare International Shoe Co. vs. Washington, 326 U.S. 310, 320-321. Because of the omission and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony there was a want of that jurisdiction over the person of

the petitioner prerequisite to the rendition of a judgment *in personnam* against him, McDonald vs. Mabee, 243 U.S. 90 cf; Webster vs. Reid, 11 How 437, 459.

"Since by virtue of the due process clause the judgment is ineffective in New York to adjudicate petitioner's rights for enforcement purposes, it cannot be made the instrument for enforcing elsewhere—the obligation purportedly adjudicated by it."

3. The Case of Harris vs. District of Columbia, 123 App. D.C., 133, 357 Fed. 2d 593, (1965), Did Not Provide a Legal Basis for the Judgment Entered by the United States Court of Appeals for the District of Columbia Circuit.

A study of the Harris case will show that the party to be charged in that case was (1) cited by the Court; (2) granted a hearing by the Court and (3) an Order of Court was entered establishing a sum certain to be paid by the parent. In the instant case, none of these elements was present.

Prior to the Harris case, the Court of Appeals in several decisions held that the liability of the parent attached at the time notice was given to such parent. The Harris case relaxed this rule and applied equity to the determination as to when the liability attached, and if the circumstances would warrant, the parent could be held liable for the past maintenance of the patient, which was allowed in that case. The argument was advanced by the District of Columbia that the Harris case held that the recovery was based on equitable principles.

Your petitioner believes this premise to be false. To subscribe to the validity of this contention, one would

have to ignore the express terms of the statute. This statute is a masterpiece in brevity and clarity and acts as a safeguard against the violation of the Due Process Clause of the United States Constitution.

Your petitioner contends that the liability of the party to be charged is inchoate in nature and does not become absolute until the occurrence of three things, namely: (1) Citing the parent during life; (2) Granting the parent a Court hearing and (3) The entry of an Order of Court against the parent for the payment of a sum certain.

CONCLUSION

It is respectfully submitted, in the light of the foregoing, that the above petition for the issuance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted.

Respectfully submitted,

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